

REMARKS

I. Summary of the Office Action and this Reply

Claims 1-20 are pending. The Examiner is thanked for the allowance of claims 9 and 18-20.

In this Reply, claims 1, 10, and 17 are amended; no new matter is added.

Support for the amendments and new claims can be found, *inter alia*, in the drawings as originally filed, and in the specification at page 6, lines 11-13, page 7, lines 11-20; page 8, lines 2-3 and 11-15; and page 9, lines 1-9.

II. Summary of Examiner Interview

The Examiner is thanked for the telephone interview conducted on May 9, 2007.

Claim 3, U.S. Patent No. 2,106,584 to Whiting and the outstanding rejection were discussed. The undersigned presented arguments that Whiting does not anticipate claim 3. Agreement was reached.

III. Response to 102 Rejections

A rejection under 35 U.S.C. §102 is proper only if each and every element of the claim is found in a single prior art reference. MPEP § 2131. The Examiner has rejected claims 1-5, 7, 8, 10, 11, 14, 16 and 17 under 35 U.S.C. §102(b), asserting that each and every element of these claims are found in Whiting, Palamara or Warren, as set forth in the Action.

Claims 3 and 4

As discussed in the Examiner interview, only Whiting was cited against claim 3. As discussed in the Examiner interview, it was agreed that Whiting does not teach or suggest an alignment member that cooperates with a recess to assure proper alignment of said first section and said second section when the device is in the closed position. Claim 3 is thus believed allowable. Claim 4 depends from claim 3 and is likewise allowable. Reconsideration and withdrawal of the rejections of claims 3 and 4 are requested respectfully.

Claims 1, 2, 5, 7, 8, 14 and 16

Independent claim 1 has been amended to obviate the Examiner's 112 rejections and to include language similar to that of claim 3, reciting a recess and alignment member cooperating to assure proper alignment of the sections when the device is in the closed position. Claim 1 is thus patentable for reasons similar to those set forth above for claim 3.

Claims 2, 5, 6, 7, 14 and 16 depend from claim 1 and are likewise patentable.

With respect to the rejection of claim 16 under section 112, Applicants respectfully submit that Figure 1b does in fact show that the blade is tapered from a distal point disposed proximally to the connection point on the first section, to a proximal end disposed distally to the connection point on the first section. In other words, the taper/slope extends from the distal point of the blade to a proximal end of the blade, and proximal end of the blade is located distally from the connection point. In other words, the blade is tapered from its distal point outwardly toward a distal end of

the first section (away from the connection point), as shown in Figure 1b. The Examiner is invited to contact the undersigned if further clarification is believed to be required.

Reconsideration and withdrawal of the rejection of claims 1, 2, 5, 7, 14 and 16 are requested respectfully.

Claims 10, 11 and 17

Independent claim 10 is directed to a foldable hand tool having an open position and a closed position, and including three sections, namely a first section, a second section, and a connector section. As amended herein, claim 10 recites that the sections have respective sides that mate with one another when said tool is in the closed position to assure proper alignment of said first section and said second section when the device is in the closed position. Thus, claim 10 is patentable for reasons similar to those set forth above for claim 3.

Further, claim 10 has been amended to obviate a 112 rejection and clarify that the first, second and connector sections are configured to permit pivoting only between said closed position and an open position,-said first and second sections being substantially parallel in said closed position, said first and second sections being aligned to form a straight handle in said open position. This is neither taught nor suggested by the cited art.

Claims 11 and 17 depend from claim 10 and are likewise patentable. Reconsideration and withdrawal of the rejections of claims 10, 11 and 17 are requested respectfully.

III. Response to 103 Rejections

Claims 6, 12, 13 and 15 stands rejected under Section 103 over Warren.

Claims 6, 12, 13 and 15

Claims 6, 12, 13 and 15 depend from claims believed patentable, as discussed above, and are thus likewise patentable.

In addition, claim 12 recites an alignment member and a recess in the sections, "wherein both of said recess and said alignment member extend in a direction perpendicular to a plane in which said first and second sections pivot. See Figure 1b. The extension of the recess and alignment member in such a direction facilitates alignment when the tool is in the closed position. This is neither taught nor suggested by the cited art.

The Examiner conclusorily asserts that one skilled in the art would find it obvious to provide for such a recess and alignment member for the claimed purpose. See Action, paragraph 10.

Rejections based on section 103 must rest on a factual basis without the use of impermissible hindsight gleaned from appellants' disclosure. The examiner may not resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968). Appellant's disclosure may not be used as a blueprint to reconstruct the claimed invention from the isolated teachings of the prior art. See, e.g., *Grain Processing Corp.*

v. American Maize-Props., Co., 840 F.2d 902, 907, 5 USPQ2d 1788, 1792 (Fed. Cir. 1988).

There is no motivation to provide such a recess and alignment member in Warren or elsewhere in the objective evidence of record. Applicants assert that this rejection is predicated on the impermissible use of hindsight, using information gleaned from applicant's disclosure.

Claims 13 and 15 depend from claim 12.

Reconsideration and withdrawal of the rejections of claims 6, 12, 13 and 15 are requested respectfully.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants believe claims 1-20 to be patentable and the application in condition for allowance, and request respectfully issuance of a Notice of Allowance. If any issues remain, the undersigned requests a telephone interview prior to the issuance of an action.

Respectfully submitted,

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